

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

VICTORIA OKHUELEIGBE, *et al.*, §
Plaintiffs, §
§
v. § **CIVIL ACTION NO. 11-2839**
§ **(Jury Trial Demanded)**
THOMAS LOYD HARRIS, *et al.*, §
Defendants. §

**MOTION TO AMEND ANSWER OF
DEFENDANT, CITY OF HOUSTON**

TO: THE HONORABLE JUDGE DAVID HITTNER

Defendant, City of Houston, moves to amend its answer in the above case.

A. Introduction

1. Plaintiff as are Victoria Okhueliegbé and Lawrence Nwora, administrator of the Estate of Sylvanus Okhueliegbé. Defendants who have been served and appeared are Thomas Harris, the City of Houston, and Mazda Enterprises, d/b/a Studio 59 Bar and Grill.
2. Plaintiffs have sued defendants for damages arising from the death of Sylvanus Okhueliegbé.
3. Defendant, City of Houston, seeks to amend its answer because more than twenty-one days has passed since it filed its answer and plaintiffs have not consented to the amendment.

4. Defendant, City of Houston, seeks to amend its answer to add the affirmative defense of pre-existing condition and to correct minor grammatical errors. The proposed amended answer is attached as Exhibit A.

B. Argument

1. Unless a party opposing an amendment to a pleading can show prejudice, bad faith, or undue delay, a court should freely grant leave to amend a pleading. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

2. Although defendant has been unable to depose plaintiffs, a review of the documents produced by the parties suggests that this additional defense is appropriate.

3. This Court should allow the filing of the City's amended answer because plaintiffs will not be prejudiced by the amended pleading.

Wherefore, defendant, City of Houston, respectfully requests that this Court grant leave to file its amended answer and for all other relief to which it is entitled.

Respectfully submitted,

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Chief, Labor Section

/s / Andrea Chan

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CITY OF HOUSTON

CERTIFICATE OF CONFERENCE

On the 6th day of September, counsel for the City of Houston forwarded a copy of the proposed amended answer to all counsel of record. Counsel for co-defendant, Thomas Harris, indicated he did not oppose the amendment. Counsel for plaintiffs and for co-defendant, Mazda Enterprises, d/b/a/ Studio 59 Bar and Grill did not indicate their respective positions. The City assumes that they are opposed.

/s / Andrea Chan
Andrea Chan

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served in accordance with the Federal Rules of Civil Procedure via First Class Mail on this the 12th day of September, 2012.

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